

REMARKS

This paper responds to the Office Action mailed on February 25, 2008. In that Office Action, the election was treated as an election without traverse, and the pending claims were rejected on a number of bases. Applicants disagree with the treatment of the election and the art-based rejection of the claims. Applicants respectfully request reconsideration of the treatment of the election and the art-based rejection. Favorable action is solicited.

Applicants thank the Examiner for acknowledgement of election of the species of Figures 1, 2, 8 and 9. Applicants respectfully disagree with treatment of the election as an election without traverse and respectfully request reconsideration of this treatment. Applicants respectfully submit that, in the Response to Restriction Requirement submitted on December 15, 2007, Applicants distinctly and specifically pointed out errors in the restriction requirement. Applicants objected to the restriction requirement, and pointed out that ALL of the claims are classified in the SAME CLASS, viz. class 604, subclass 103.03. As all of the identified Species are in the same class and subclass, there is no burden on the Examiner to examine all of the Species together. As there is no serious burden on the Examiner if restriction is not required, MPEP §803 states that the criteria for a proper restriction requirement do not exist. Given that Applicants made these arguments in the Response to Restriction Requirement, it is not proper to treat the election as an election without traverse. Applicants respectfully request the Examiner to treat the election as being made **with traverse**. Favorable action is solicited.

Applicants have amended the pending claims to more positively recite the drug-eluting metal balloon embodiment of the present invention, including a dual layer balloon in which at least one of the balloons consists essentially of at least one metal. This amendment is fully supported by the specification as originally filed, e.g., Figure 3, and Paragraph 0029. It is submitted that no new matter is added by the presentation of the presently amended claims.

Claims 1-7, 13 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,733,513. This application and the '513 patent are commonly owned. Applicant submits that the claims as amended traverse the Examiner's provisional non-statutory obviousness-type double patenting rejection. However, to the extent that the Examiner may maintain this provisional rejection, Applicants reserve the right to file a terminal disclaimer upon indication of allowable subject matter in the present case.

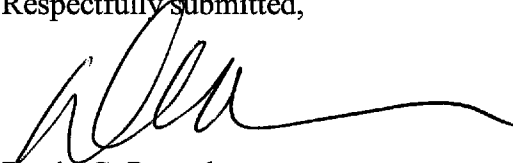
Claims 1-7, 13 and 15 are rejected under 35 USC § 102(b) as being anticipated by Euteneur. Applicants respectfully submit that this rejection has been overcome by the amendment to claim 1 - the sole independent claim. Thus, claim 1, which includes, *inter alia*, the limitation that one of the balloons is made consisting of at least one metal and that there is a dual balloon configuration and drug-eluting openings, none of which is found in the cited reference, is allowable. As the other claims depend, either directly or indirectly from independent claim 1, those dependent claims are allowable as well.

Any amendments made during prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as an acknowledgement of the validity of any rejection raised in prosecution, nor as an acknowledgement that any citation made against the application is material to the patentability of the application prior to amendment.

Applicants submit this Response in conjunction with a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) along with payment of the associated fee. No additional fees are believed due with this Response, however, the U.S. Patent Office is authorized to charge any underpayment of fees or credit any overpayment of fees to Deposit Account No. 18-2000 of which the undersigned is an authorized signatory.

Should the Examiner find any outstanding matters that are resolvable by telephone interview, the Examiner is invited to telephone the undersigned to discuss the same.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Rosenbaum', with a long horizontal flourish extending to the right.

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